

Message Text

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C O N F I D E N T I A L KABUL 0655

GENEVA FOR MR. CAVANAUGH

PARIS FOR DEA

E. O. 11652: GDS
TAGS: SNAR, AF
SUBJECT: INADEQUACIES OF THE AFGHAN JUDICIAL SYSTEM IN PRO-
SECUTING NARCOTICS OFFENDERS

REF: 77 KABUL 8693

1. SUMMARY: THE AFGHAN LEGAL AND JUDICIAL SYSTEM IS NOT SUFFICIENTLY ADQUATE TO DEAL EFFECTIVELY WITH ARRESTED NARCOTICS OFFENDERS. AN IMPORTANT GAP IS THE LACK OF A "CONSPIRACY" PROVISION IN EXISTING AFGHAN LAW WHICH WOULD PERMIT THE AUTHORITIES TO GO AFTER THE KEY ORGANIZERS OF THE ILLICIT NARCOTICS TRADE. THE UN IS URGING THE GOVERNMENT OF AFGHANISTAN (GOA) TO ADOPT A DRAFT NARCOTICS LAW WHICH WOULD HELP TO CORRECT THESE SHORTCOMINGS. END SUMMARY.

2. SOME WEEKS AFTER THE U.S. MISSION'S NARCOTICS CONTROL COUNCIL
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CONSIDERED THE ADEQUACY OF AFGHAN NARCOTICS LEGISLATION (PARA 4 REFTEL), A FEW EMBASSY OFFICERS HAD AN OPPORTUNITY TO HEAR THE COMPLAINTS OF LOCAL UN NARCOTICS ADVISER CHRISTIAN MAGNUSSEN, UNFDAC/UNDND, CONCERNING THE FRUSTRATIONS AND PRACTICAL PROBLEMS HE HAS FACED IN TRYING TO HAVE NARCOTICS OFFENDERS PROSECUTED IN AFGHANISTAN.

3. ACCORDING TO MAGNUSSEN, THESE PROSECUTION PROBLEMS BEGIN IMMEDIATELY AFTER AN ARREST. BECAUSE THE NEW 1977 CONSTITUTION REQUIRES THAT THE MINISTRY OF JUSTICE TAKE OVER ALL CRIMINAL INVESTIGATIONS RIGHT AFTER THE APPREHENSION OF A SUSPECT, THE MINISTRY OF INTERIOR'S POLICE -- WHO ARE MAGNUSSEN'S ONLY AUTHORIZED POINT OF WORKING CONTACT -- NOW DROP QUICKLY OUT OF THE CASE, WHICH IS THEN LEFT TO THE JUSTICE MINISTRY'S CURRENTLY UNDERSTAFFED, INEXPERIENCED COTERIE OF PUBLIC PROSECUTORS. (MAGNUSSEN CLAIMS -- PERHAPS AN EXAGGERATION -- THAT A STRICT ADHERENCE TO THE NEW CONSTITUTIONAL REQUIREMENT WOULD REQUIRE THAT A TRAFFIC POLICEMAN DESIST FROM DEMANDING THE DRIVER'S LICENSE OF A MOTORIST HE HAS STOPPED FOR A VIOLATION.)

4. MAGNUSSEN'S NEXT FRUSTRATION OCCURS AT THE TRIAL STAGE. IN PRACTICE, EVIDENCE OR WITNESSES ARE OF MINIMAL, IF ANY, IMPORTANCE IN AN AFGHAN CRIMINAL COURT -- EVEN IF THE CRIMINAL HAS BEEN CAUGHT "RED HANDED." A WRITTEN, SIGNED CONFESSION BY THE ACCUSED IS REQUIRED BEFORE THE CASE CAN BE BROUGHT TO TRIAL. THE TRIAL JUDGE THEN CONSIDERS THE CASE ONLY WITHIN THE FRAMEWORK OF THAT CONFESSION (WHICH MAY REFLECT THE AFGHAN VERSION OF OUR PRACTICE OF PLEA BARGAINING). WHETHER A PARTICULAR CASE COMES TO TRIAL OR NOT DEPENDS ON THE INTEREST AND ABILITY OF THE PROSECUTING AUTHORITIES TO SECURE THE NECESSARY CONFESSION.

5. FROM MAGNUSSEN'S VIEWPOINT -- AND OUR OWN, AS WELL -- THE MOST IMPORTANT LEGAL SHORTCOMING HERE IS THE LACK OF A CONSPIRACY CONFIDENTIAL

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PROVISION IN THE PRESENT AFGHAN CRIMINAL CODE. THIS BLOCKS THE AUTHORITIES FROM GOING AFTER THE "MR. BIG" WHO HAS DISPATCHED THE NARCOTICS COURIER THEY HAVE JUST CAUGHT ON THE ROAD -- EVEN IF THE ARRESTEE SUBSEQUENTLY IDENTIFIES HIS BOSS BY NAME. EVERY IMPORTANT OPIUM PRODUCTION PROVINCE IN AFGHANISTAN HAS AT LEAST ONE PROMINENT FAMILY PROVIDING OVERALL DIRECTION TO LOCAL NARCOTICS OPERATIONS. THE AFGHAN AUTHORITIES REPORTEDLY KNOW WHO THEY ARE, BUT THEY CANNOT BE TOUCHED BECAUSE CONSPIRACY IS NOT A CRIME HERE.

6. ACCORDING TO MAGNUSSEN, THE DRAFT "NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) LAW" PROPOSED FOR ADOPTION BY THE UNDND IS STILL "UNDER CONSIDERATION" BY THE GOA, ALBEIT NOT TOO ACTIVELY. IN VIEW OF THE MASSIVE HINDERANCE TO ENFORCEMENT CAUSED BY THE LACK OF ADEQUATE ANTI-NARCOTICS LEGISLATION HRE, THE EMBASSY RECOMMENDS THAT, DURING HIS WASHINGTON CONSULTATION, AFGHAN NARCOTICS COORDINATOR MAHOMMAD YAHYA MAROOFI BE URGED TO HELP TO DISLODGE THE DRAFT LEGISLATION FROM ITS CURRENT BUREAUCRATIC LIMBO AND HAVE IT ADOPTED AS SOON AS POSSIBLE.

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